[Cite as *Citizens Banking Co. v. Real Am., Inc.*, 2013-Ohio-1710.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Citizens Banking Company	Court of Appeals No. OT-11-044
Appellee	Trial Court No. 10-CV-876-E
v.	
Real America, Inc., et al.	**DECISION AND JUDGMENT**
Appellants	Decided: April 26, 2013

* * * * *

Richard R. Gillum, for appellee.

D. Jeffery Rengel and Thomas R. Lucas, for appellants.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from the Ottawa County Court of Common Pleas, which granted appellee's motion for receivership on various subject properties in an order issued on November 22, 2011. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellants, Real America Inc., Hazard Adventures Co., and Edmund Guedenas (" appellants") set forth the following three assignments of error:

I. THE TRIAL COURT ERRED WHEN IT APPOINTED A RECEIVER WITHOUT PROPER DUE PROCESS.

II. THE TRIAL COURT'S ORDER APPOINTING A RECEIVER WAS UNDULY BROAD RISING TO A LEVEL OF ABUSE OF DISCRETION.

III. THE TRIAL COURT ERRED WHEN IT ALLOWED THE RECEIVER TO REMAIN IN CONTROL AFTER PRESENTED WITH AMPLE EVIDENCE OF HIS INCOMPETENCE AND HIS DERELICTION OF DUTY.

{¶ 3} The following undisputed facts are relevant to this appeal. Appellee is the holder of notes secured by accompanying mortgages encompassing several parcels situated on Middle Bass Island, Ottawa County, Ohio. The parcels contain a business known as, "Hazards Microbrewery and Restaurant." Appellee, the first priority lienholder, holds judgments against all appellants in connection to the above described notes.

{¶ 4} On December 21, 2010, appellee filed a complaint for foreclosure and cognovit judgment against appellants. On December 27, 2010, the trial court issued monetary judgments against appellants. On January 18, 2011, appellants filed an amended answer and counterclaim. On January 20, 2011, appellants filed a Civ.R. 60(B) motion for relief from judgment.

{¶ 5} On July 25, 2011, appellee filed a motion for the appointment of a receiver. This motion was filed jointly with the Meyer Leasing Companies ("Meyer"). Significantly, on July 26, 2011, the court issued a scheduling order directing that objections to the motion for appointment of a receiver be filed on or before August 26, 2011. On August 1, 2011, appellants filed a motion for a 30-day extension of time in which to file a brief in opposition to the appointment of a receiver.

{¶ 6} On August 4, 2011, an evidentiary hearing was held regarding appellants' Civ.R. 60(B) motion. At that time, appellee indicated its contemplation of pursuing a motion to expedite the receivership matter. The trial court indicated that if appellee followed through with filing a motion to expedite receivership, a status conference would be held prior to any hearing on the expedited motion for receivership. Notably, the ruminated expedited motion for receivership was not filed.

{¶ 7} Significantly, appellants now contend, without objective evidentiary support, that the trial court somehow assured or committed to holding a conference prior to making a determination on receivership. On the contrary, the record merely reflects the trial court's conditional indication of conducting a status conference prior to any consideration of expedited receivership. No motion to expedite the already pending motion for receivership was ever filed. Accordingly, the previously announced timeframe in which to file any opposition to the pending receivership motion was already ticking. Consistent with an awareness of the time constraints, appellants had already filed a motion for extension in which to file a brief in opposition. This action by

appellants is counter to their post hoc claims of an "understanding" that some sort of unwritten and undocumented obligation existed on the part of the court, not reflected in the record of evidence, to conduct a hearing prior to taking action on the already pending motion for receivership.

{¶ 8} Notably, on September 7, 2011, appellants filed a second request for an extension of time in which to file a brief in opposition to the pending motion for receivership. No further extensions were sought by appellants. Appellants did not file a brief in opposition despite requesting and receiving two extensions of time in which to do so. Pursuant to appellants' own motions for extensions of time in which to respond, and the cooperation of the trial court in granting both extensions, the brief in opposition to receivership was due on or before October 26, 2011.

{¶ 9} On November 22, 2011, nearly a month after the final deadline for filing a brief in opposition to receivership, appellants had not and did not file a brief in opposition nor had they requested a third enlargement of time in which to do so. On November 22, 2011, upon review and consideration of extensive background documentation in support of the receivership motion, as well as various supporting affidavits and admissions, the trial court granted the motion for the appointment of a receiver for the subject distressed properties. This appeal ensued.

{¶ 10} In the first assignment of error, appellants assert that the trial court erred and abused its discretion in the appointment of a receiver. In support, appellants essentially contend that the trial court somehow denied due process requirements to

appellants prior to granting the motion requesting the appointment of a receiver. We do not concur.

{¶ 11} Appellants assert that the trial court breached a due process obligation to appellants by granting the motion for a receiver without holding an evidentiary hearing. As referenced above, appellants purport that in the course of the Civ.R. 60(B) evidentiary hearing, the trial court conveyed some sort of enforceable verbal assurance of conducting an evidentiary hearing on receivership prior to ruling on the motion for receivership. We do not share in appellants' assessment of the record. On the contrary, the record reflects that the trial court conditionally discussed conducting a status conference in the event a motion to expedite receivership was filed. No such motion to expedite receivership was ever filed.

{¶ 12} In conjunction with the above, we note that receivership is indisputably statutory in nature. Of relevance, R.C. 2735.01 et seq. does not mandate an evidentiary hearing prior to ruling on a motion seeking an order for appointment of a receiver. While appellants cite *Poindexter v. Grantham*, 8th Dist. No. 95413, 2011-Ohio-2915, in support of the proposition that a hearing is required, we note that *Poindexter* is materially distinguishable in that no supporting evidentiary materials were furnished in support of the motion for a receiver in that case. By contrast, the record reflects that extensive supporting documentation, affidavits, and admissions were submitted in this case to enable the court to properly consider the motion prior to ruling on it.

{¶ 13} The record of evidence is devoid of any objective or persuasive evidence in support of the notion that the trial court acted unreasonably, arbitrarily or unconscionably in not conducting a hearing prior to ruling on the motion for the appointment of a receiver. On the contrary, the record reflects the trial court granted several extensions of time to appellants in which to file a brief in opposition. They did not do so. The record reflects that the trial court had extensive evidentiary support before it prior to making a ruling on the motion for the appointment of receiver. Again, there is no statutory requirement for such a hearing. Appellants' contention that the trial court somehow voluntarily consented to such a requirement is not sustained by the record. Wherefore, we find appellants' first assignment of error not well-taken.

{¶ 14} In appellants' second assignment of error, they contended that the trial court somehow abused its discretion in the scope of authority granted to the receiver. In support, appellants go to great and dramatic lengths to cast aspersions on the competency and performance of the receiver subsequent to his involvement with the subject properties. For example, appellants unilaterally proclaim, "To allow a receiver with no experience operating such facilities to take over control of these treatment plants is an invitation for catastrophe."

{¶ 15} Appellants subjectively and vehemently maintain that the receiver lacks the requisite knowledge and expertise to properly operate the businesses connected to the subject properties. We concur with appellee that the bulk of appellants' assertions in support of their second assignment of error have no foundation in the record of evidence.

On the contrary, the arguments consist of unsupported and unilateral assertions and conclusions. Wherefore, we find appellants' second assignment of error not well-taken.

{¶ 16} In the third assignment of error, appellants suggest that the trial court abused its discretion in failing to remove the receiver despite various alleged transgressions of the receiver being brought to the attention of the court by appellants subsequent to the appointment of the receiver.

{¶ 17} In the third assignment, appellants again delve into the alleged inadequacies and missteps of the receiver, as subjectively perceived by appellants. Notably, appellants have not cited any binding precedent in support of the notion that a trial court electing to leave an appointed receiver in place despite subjective post-appointment complaints from the parties from whom control of the properties was removed in any way constitutes an appealable action.

{¶ 18} On the contrary, caselaw reflects that even an actual motion to vacate receivership is not final and appealable. *Polina v. Parker*, 10th Dist. No. 80AP-529, 1980 WL 353715 (Sept. 23, 1980). Wherefore, we find appellants' third assignment of error not well-taken.

{¶ 19} On consideration whereof, the judgment of the Ottawa County Court of Common Pleas is hereby affirmed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE